IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

OP.No. 5663 of 2000(Y)

PETITIONER:

P.J.A. MOHAN, S/O. P.A. JOSEPH,
MANAGING PARTNER,
M/S. ASIAN METALS,
IV/243, KUTTOOR P.O.,
THIRUVALLA – 689 100.

BY ADV. SRI.S.SUBHASH CHAND
SRI.V.JINACHANDRAN
SMT.V.SETHUKUTTY AMMA

RESPONDENTS:
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1. THE REGIONAL PROVIDENT FUND COMMISSIONER,
OFFICE OF THE REGIONAL PROVIDENT FUND COMMISSIONER,
KERALA, BHAVISHYANIDHI BHAVAN,
PATTOM P.O., THIRUVANANTHAPURAM.

2. THE ENGORCEMENT OFFICER,
EMPLOYEES' PROVIDENT FUND ORGANISATION,
REGIONAL OFFICE,
BHAVISHYANIDHI BHAVAN,
PATTOM P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.N.N.SUGUNAPALAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.9463/2000 IN OP.NO.5663/2000-Y

DISMISSED

12.9.2007. SD/- ANTONY DOMINIC, JUDGE.

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1 COPY OF THE FIRST INFORMATION REPORT DTD 1.9.95 IN CRIME NO.351/95 OF THIRUVALLA POLICE STATION.

EXT.P2 COPY OF THE ORDER IN WCA NO.805/99 DTD 20.11.99 PASSED BY THE COMMISSIONER FOR WORKMEN'S COMPENSATIN, THIRUVANANTHAPURAM.

EXT.P3 COPY OF THE SHOW CAUSE NOTICE DTD 5.11.99 ISSUED BY THE R1.

EXT.P4 COPY OF THE REPLY DTD 17.11.99 SUBMITTED BY THE PETITINER TO R1.

EXT.P5 COPY OF THE ORDER DTD 17..1.2000 PASSED BY R1.

/TRUE COPY/

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ANTONY DOMINIC, J.

O.P.NO.5663 OF 2000-Y

Dated this the 12th day of September, 2007.

JUDGMENT

The challenge in this writ petition is against Ext.P5 order issued by the 2nd respondent exercising his power under Section 14 B of the employees Provident Funds and Miscellaneous Provision Act, 1952. Petitioner is the Manager of a firm, which owned a covered establishment. The establishment was covered from 31.7.1995. The establishment committed a default for the period from September, 1995 to October,1996. Although the liabilities were discharged, proceedings were initiated under Section 14 B by Ext.P3 show cause notice. That was replied by Ext.P4 pointing out the circumstances which led to the delay in payment. According to the petitioner, for reasons beyond his control, the dues could not be paid in time and that such mitigating circumstances justify his total exoneration from damages. However, in the opportunity of hearing that was granted, this contention did not appeal to the 2nd respondent. By Ext.P5, he levied damages at the rate prescribed in Paragraph 38 A of the scheme 1952. It is the said order, that is sought to be challenged in this writ petition.

2. Though the learned counsel for the writ petitioner do not dispute the allegation that there was default for the period in question , the learned counsel would contend for the position that the authority levying damages did not exercise the discretion conferred on him in terms of the provisions of the Act. In this context, the learned counsel for the writ petitioner makes reference to the counter affidavit wherein it has been pleaded that under Section 14 B, the 1st respondent has no jurisdiction to reduce or waive damages.

2. This stand of the 1st respondent does not appear to be the correct position. Para 14 B of the Act provides for levy of damages . This confers discretion to the authorities. Therefore, the authority exercising that power has to consider the facts of each case and then decide as to what is the rate of damages that has to be levied. Para 32 only gives a broad communication and the upper limit. This position is also settled by a series of judgments of this court as also the Apex Court. Thus in this case, the discretion so conferred has not been exercised and it is the admitted case as stated in the counter affidavit.

3. Therefore, I dispose of this writ petition quashing Ext.P5 and directing the 1st respondent to take a fresh decision in the matter after affording an opportunity of hearing to the petitioner. Orders shall be passed adverting to the contentions raised by the parties.

With these observations, this writ petition is disposed of .

ANTONY DOMINIC, JUDGE.

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ANTONY DOMINIC, J.

O.P.NO.5663 OF 2000-Y

JUDGMENT

12th September, 2007.